IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REFERENCE NO.2 OF 2006

Kamlaakant Wamanrao Vitonde .. Petitioner
V/s
Ghanashyam Gopaldas Khanchandani & Anr .. Respondents

Mr.Bharat Mehta, APP for Petitioner.
Mr.Ghanashyam Gopaldas Khanchandani- Respondent No.1 in person present.

CORAM : B.H.MARLAPALLE & NARESH H.PATIL,JJ.
DATE : 9th October, 2006.

P.C.:

1. The contemnor Ghanashyam Gopaldas Khanchandani is chrged for commiting the criminal contempt of court of the learned Metropolitan Magistrate for the instances occurred on 20th June, 2005 and 16th September, 2005, under section 2(c) of the Contempt of Courts Act, 1971.

2. The reference was made under Section 15(2) of the Contempt of Courts Act by the Petitioner Kamlakant Wamanrao Vitonde, Registrar (legal), Consumer Disputes Redressal Commission, Maharashtra State, Mumbai, for the alleged contemptuous act committed by the Respondent contemnor at the time when the Petitioner was presiding over as Metropolitan Magistrate, 14th Court, Girgaon, Mumbai for the period from 18th May, 2004 to 31st December, 2005. While making reference, the then Metropolitan Magistrate brought to the notice of this Court the conduct of the contemnor, more precisely, on 20th June, 2005 and 16th September, 2005. It is stated

by the petitioner that the Respondent contemnor was the accused in 19 criminal cases viz.C.C.Nos.1243, 1267 to 1281, and 2841 to 2843 of 2003 for the offences punishable under Section 138 of the Negotiable Instruments Act. In the reference order, the Magistrate alleged that the contemnor is in the habit of making grievances against the presiding Judge of the Court so that the cases in which he is accused are protracted and resultantly delayed. It is stated by the learned Magistrate that it was the expectation and insistence of the contemnor that all orders should be passed in his favour irrespective of the facts of the case and the legal position. The contemnor, on rejection of his application/s would get annoyed and threaten the Petitioner in the open Court while he was in the Chair.

3. The magistrate further refers to the order passed by the Bombay High Court on 28th January, 2005 in Criminal Writ Petition No.1980 of 2004 with Criminal Application No.5205 of 2004 (wherein the present contemnor was the petitioner), in which this Court in paragraph Nos.2, 3 and 6 of the order has observed as follows:-

> 2. ..... Moreover, it appears from the orders which were produced before me that the Petitioner is in the habit of making grievances against the presiding Judge of the Court. Perhaps, the attempt is only to ensure that the trial does not proceed further in accordance with law.
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> 3. In so far as the request of the petitioner for transfer of the case is concerned, I see no basis to accept the same. In my opinion, as already observed, the petitioner is only trying to protract the proceedings by taking different excuses

including of making unwarranted and unfounded allegations against the judges of the lower Court.

6. In the peculiar facts of this case, I would think it appropriate to direct the trial Court to expeditiously decide the trial, as it is pending since 1997, and in any case to conclude the same not later than six months from today. The trial Court shall proceed on day to day basis once the trial commences. In case it is observed by the trial Court that the petitioner is responsible for delaying the trial in any manner, that fact be recorded in the roznama which can be taken into account as and when the occasion arises.

4. The learned Magistrate further alleged that on 16.9.2005 when the Magistrate rejected the two applications filed by the contemnor accused, at that stage the contemnor threatened the petitioner in the open court and uttered that he is going to make a complaint against the Magistrate to the Hon'ble the Chief Justice and that he has also preferred applications for seeking certified copies of the orders for producing the same before the Hon'ble the Chief Justice. The Magistrate had noted down the incident at the end of the said order, the copy of which alongwith the copy of the application for seeking certified copy filed on 16.9.2005 is sent to this Court alongwith the reference. It is alleged by the Magistrate that the threatening utterrances were made by the contemnor in the open Court in the presence of the Advocate Mr.Madhoosudan Nair (who was appearing for the complainant), and the Advocates Mr.Arcanjo Mario Soddar, Ms.Manjoo Dalal and Mrs.Chande and others. Some of the Advocates present there had also filed affidavits viz.affidavit dated 22.9.2005 filed by Advocate

Mr.Arcanjo Mario Soddar and affidavit dated 11.11.2005 filed by Ms.Manju Dalal, which are part of the reference proceedings. It is alleged by the Magistrate that the complainant threatened him saying that he had filed complaint against Mr.D.A.Joshi, Additional Chief Metropolitan Magistrate, 4th Court, Girgaon, Mumbai thereby meaning that the contemnor will also prefer complaint in respect of the Magistrate.

5. As regard the incident of 20th June, 2005 it is alleged that on the date of hearing the contemnor insisted that there should be separate trial and cross examination in the various criminal cases in which he was accused. The learned Magistrate has stated that there is a single agreement and documents are common in all the 19 cases and therefore the separate trial for each case was not desirable. The Magistrate has stated that the contemnor cross-examined P.W.No.1 (running into 80 pages) and still he was insisting that he would continue cross examining the P.W.No.1 separately for 19 times with the same questions. This the Magistrate considered an act of deliberately protracting and prolonging the hearing of the criminal cases. The request of the contemnor was turned down by the Magistrate by an order dated 20.6.2005 on which the contemnor got annoyed. It is alleged that during the dictation of the said order the contemnor threatened the Magistrate by referring to the complaint he had filed against Mr.D.A.Joshi, Additional Chief Metropolitan

Magistrate, 4th Court, Girgaon, Mumbai thereby indicating that the contemnor will also prefer complaint in respect of the concerned Magistrate. The utterances of the contemnor were heard by the Advocates and others who were present in Court. Note of such threat was taken by the Magistrate in the order dated 20.6.2005, the copy of which is produced on record. Advocates Mr.Madhoosudan Nair and Mr.Rajiv Shelar, submitted affidavits of the incident dated 16.9.2005 and 20th June, 2005 regarding the behaviour and conduct of the contemnor. The learned Magistrate found the said two incidents dated 20.6.2005 and 16.9.2005 to be objectionable and accordingly, issued show cause notice to the contemnor on 28.9.2005. The contemnor filed reply. The Magistrate states that in the said reply filed before him, the contemnor made false allegations against him. Those documents were forwarded by the Magistrate to this Court.

6. It is alleged against the contemnor that he is in the habit of filing applications with identical pleadings and prayers inspite of the fact that such requests were turned down by the Court earlier. It is further stated by the Magistrate that against orders passed on applications, the contemnor had preferred revision cum transfer application No.947 of 2005 before the Sessions Court, Mumbai, which came to be rejected by an order dated 25.11.2005. On the very 3rd day of the rejection order the contemnor preferred similar

application with the same prayer. At one stage, the contemnor filed affidavit in lieu of examination in chief running into 250 pages including the arguments, quotations citations of the judgments of the Hon'ble the Supreme Ccourt and the High Courts.

7. This Court issued notice to the contemnor asking him to show as to why action should not be taken against him under the Contempt of Courts Act, on 2nd May, 2006. By an order dated 14.8.2006 this Court ordered that the contemnor needs to be proceeded with for having committed contempt of court, and accordingly charges were framed against the contemnor. The plea of the contemnor was recorded on 5.9.2006. The contemnor denied the charges. Before this Court, the contemnor had filed voluminous documents in the shape of affidvit in reply, synopsis, rejoinder/ additional rejoinder etc.

8. The charges against the contemnor are as follows:-

(i) That on 16th September, 2005 during the course of proceedings in 19 criminal cases for an offence punishable under Section 138 of the Negotiable Instruments Act where the contemnor is accused, he threatened the Presiding Officer, 14th Court, Girgaon (Metropolitan Magistrate) that he would make complaint against him (Metropolitan Magistrate) to the Chief Justice and that he has already made application for certified copies for producing the same before the Chief Justice;

(ii) That the contemnor on 20th June, 2005 where the proceeings were going on in the cases in which the contemnor is accused stated that he had preferred a complaint against Mr.D.A.Joshi, Additional Chief Metropolitan Magistrate, 4th Court, Girgaon and thereby telling the Presiding Officer, 14th Court that similar complaint would be made against him

(Metropolitan Magistrate);

(iii) That he (contemnor) has been dictating his terms to the Court and keeps on making applications after applications to protract the trial of the criminal cases in which he is accused and thus obstructing the process of Court.

9. In substance, the contention of the contemnor who argued his case personally is that he had brought to the notice of this court on 8.8.2006 regarding the fact of tampering of most relevant material evidence by the petitioner (Magistrate) while the said documentary evidence itself was part of the Courts record and judicial proceedings. It is contended that this itself amounts to an offence as this documentary evidence was in the custody of the Hon'ble High Court and this fact was not controverted by the Counsel who appeard for the petitioner as the Counsel was well aware of the fact. It is contended that the offence has been commited knowingly by the Magistrate and the co-conspirators in order to falsify the statement made by the Rrespondent on oath vide his affidavit in reply dated 24.7.2006. It is further stated by the contemnor that the afidavit submitted by Mr.Madhoosudan Nair, an Advocate is not sworn, or does not show affirmation and the date of such affirmation or an authority before whom it was presented. The contemnor contends that the fraud is committed by the petitioner, in the sense he has tampered the material evidence while the same was in the

custody of the High Court, and the High Court is empowered to take cognizance or an action as provided under Section 195, 340 and 482 of the Criminal Procedure Code read with section 193 of the Indian Penal Code, alongwith the provisions of Section 16(1) of the Contempt of Courts Act. The contemnor further states that the intent and motive of the petitioner has been proved in order to falsely implicate the Respondent, which itself amounts to abuse of powers and authority possessed by the Petitioner. The contemnor raised the issue that the petitioner was not subordinate Court as he had passed the reference order in the capacity of the Registrar (Legal) of the Consumer Disputes Redressal Commission, Maharashtra State. It is further contended that the Counsel who appeared on behalf of the petitioner had no locus standi before the High Court. It is further contended by the contemnor that the petitioner may be directed to file an affidavit in reply or may admit the contentions raised by the contemnor so that this Court may come to a final conclusion regarding the abnormal conduct of the petitioner (Magistrate) which itself is unbecoming of a presiding officer of a court of law at the material time, and/or an enquiry/Departmental enquiry and or judicial probe may be ordered so that the litigants appearing in person should not be left at the mercy of such type of biased officers and the litigants can secure justice without any fear. The contemnor contends that he is innocent and he has been falsely involved in this case under

reference in the contempt case by making unwarranted allegations by the Magistrate. The initial objection of the contemnor regarding the locus standi of the Magistrate who has made the reference to this Court while he was working as Registrar (Legal) of the Consumer Disputes Redressal Commision was dealt with by this Court and by a speaking order dated dated 14.8.2006 the said contention has been rejected. The preliminary objection of the contemnor has been overruled by this Court. The contemnor submitted that the proper documents are not placed on record of this court. The contemnor has submitted that he had never consented for the joint and common trial of the criminal cases in which he was an accused. The contemnor further states that the affidavits which are filed by the Advocates also does not deserve to be relied upon by this Court. The contemnor has submitted that he has not committed any contempt of the Court.

10. The petitioner has advanced his oral arguments as well as he was permitted to place on record the documents and written submissions. We have considered the submissions advanced by the contemnor and the reference proceedings and the documents placed on record by the contemnor. Perusal of the reference order and the annexures and the material placed on record indicates that the contemnor was facing around 19 cases as an Accused, arising out of the provisions of Section 138 of the Negotiable Instruments Act. At one stage,

the High Court had taken a serious view of the conduct of the contemnor and had observed that the contemnor is protracting the criminal cases. It was further observed by this Court that the contemnor was in the habit of making grievances agianst the presiding Judge of the Court to ensure that the trial does not proceed further in accordance with the law, and that it is prolonged. It was further observed by this Court that the contemnor was engaged in making unwarranted and unfounded allegations against the judges of the lower Courts. The contemnor had even referred to the complaint filed by him against the judge Mr.D.A.Joshi, Additional Chief Metropolitan Magistrate, 4th Court, Girgaon, Mumbai, and probably by referring to the said complaint the contemnor was trying to impress upon the learned Magistrate of 14th Court that he would also face identical situation. Such a conduct on the part of the contemnor who was accused in the criminal cases amounts to criminal contempt of court as defined under Section 2(c) (i) & (iii) of he Contempt of Courts Act, 1971. The act and conduct the contemnor has lowered down the authority of the Court and has interfered in the administration of justice. The Magistrate had brought to the notice of this Court that voluminous cross examinations done by the contemnor of the witness P.W.No.1 running into 80 pages and the affidavit of more than 250 pages filed in response to the examination in chief of the witness. It can reasonably be gathered that the insistence of the contemnor to have separate

trials of 19 cases wherein he was an accused is just to protract the trial and obstruct the expeditious disposal of the cases. It cannot be forgotten that under the orders of the High Court dated 28.1.2005 the trial Court was directed to hear the cases on day to day basis as trials were pending since the year 1997. We are satisfied from the record produced before this Court to say that the contemnor was in the habit of making repeated requests in the shape of applications, inspite of the same being turned down and rejected at the earlier stages. The contemnor seems to be in the habit of prolonging the life of the litigations in which he was facing the charges as an accused person.

11. From the reference and the affidavits filed by the Advocates of the same court, the order passed by this Court on 28.1.2005, and the attending facts and circumstances, we are of the view that there are no reasons to disbelieve the version of the Magistrate as reflected in the reference order to the effect that the contemnor threatened the Magistrate in the open court which amounts to scandalizing the court by which the authority of the Court is lowered down. By the act of the contemnor the criminal cases which are pending since 1997 are still prolonged and could not be disposed of. Such attitude on the part of the litigant cannot be tolerated. It has been noticed by this Court that in the affidavit in reply, rejoinder and the written submissions filed by the contemnor in this Court, the

contemnor has made various allegations against the Magistrate, which are absolutely in bad taste and the same are contemptuous in nature. These allegations are reckless and would show that the contemnor had no remorse of his conduct.

12. We have noticed that the contemnor is in full support of his conduct. We find that he was in the habit of taking confrontation with the Court no sooner he faced adverse orders. This attitude of the contemnor is highly objectionable and is not in keeping with the dignity and decency which has to be maintained at all costs in the judicial proceedings.

13. For the reasons stated above, we are of the view that the Respondent had committed contempt of the Court as defined under Section 2(c)(i) and (iii) of the Contempt of Courts Act, 1971. We therefore hold the contemnor Ghanashyam Gopaldas Khanchandani guilty of contempt of court.

14. The Contemnor seeks time of one week either to purge the contempt by submitting an apology and undertaking as contemplated below the proviso to Section 12(1) of the Act or to argue on the quantum of punishment.

15. Time granted. Stand over to 16.10.2006.

(NARESH H.PATIL,J.) **(B.H.MARLAPALLE, J.)**